

**CITY OF BEAVERTON
STAFF REPORT AND RECOMMENDATION**

TO: Planning Commission

STAFF REPORT DATE: Wednesday, March 9, 2005

STAFF: Colin Cooper, AICP, Senior Planner

SUBJECT: TA 2004-0009 (Completeness Processing Amendment)

REQUEST: Amendment to Section 50.25 (Application Completeness) to prevent land use applicant's or their representative's from refusing to submit required information to avoid the normal completeness review and then submit information at a later date.

APPLICANT: City of Beaverton - Development Services Division

AUTHORIZATION: Ordinance 2050 (Development Code), effective through Ordinance 4332)

APPLICABLE CRITERIA: Development Code, Section 40.85.15.1.C.1-7 (Text Amendment Approval Criteria)

HEARING DATE: Wednesday, March 16, 2005

RECOMMENDATION:
Staff recommend APPROVAL of text amendment application TA 2004-0009 (Completeness Processing Amendment).

I. Proposed Legislative Text Amendment

Section 50.25.7.c of the Development Code states that a land use application shall be deemed complete upon written notice from an applicant that they refuse to submit information that is either required by the Development Code or has been identified during the application process as necessary for review of the application. With increasing regularity, the Development Services staff witness applicants or their representatives “gaming” the system by submitting written refusal to submit information as required by the Development Code, land use application form, or as identified by the Planning Director during a pre-application conference in order to shorten the completeness process. Section 50.25.7 states that once an application is deemed complete, an applicant has 14 days in which an applicant may amend the completed application. What staff has been witnessing is an applicant amending the completed application after the 14 days prior to the Facilities Review Committee meeting or public hearing in order to avoid a potential negative recommendation or decision due to a lack of information in the record. Therefore, staff is proposing a text amendment that would not allow the submission of information that is required by the Development Code, application form, or the pre-application once an applicant has provided written refusal to submit the information as part of the completeness process without returning to the application completeness stage of review. This prohibition would supersede the general 14 day allowance to amend the application with information that was not identified as necessary through the completeness process because the applicant has directed the City to process their application “as is”. When the applicant or their representatives provide the information later in the process, the resulting effect is to reduce the effectiveness of citizen participation and quality staff review. Staff witness “information dumps” well within the process that have created considerable hardships for all parties involved in the review process. The following proposed amendment to Section 50.25 (Application Completeness) of the Development Code seek to minimize this practice and provide a fair and balanced land use review process.

Proposed Text:

50.25. Application Completeness

50.25.7

7. The application will be deemed complete for the purpose of this section upon receipt by the Community Development Department of:
 - a. All the missing information;
 - b. Some of the missing information and written notice from the applicant that no other information will be provided; or

- c. Written notice from the applicant that none of the missing information will be provided.

8. If an applicant has chosen to refuse to submit missing information as specified in Section 50.25.7, the information identified as missing may only be submitted if the applicant agrees to a new 30 day timeline to determine completeness of the application and a new 120-day timeline pursuant to ORS 227.178 to render a final decision. An applicant may not invoke Section 50.25.11. when written refusal to submit information identified through the completeness process has been submitted in order to deem an application complete.

- 89. Pursuant to ORS 227.178, the City will reach a final decision on an application within 120 calendar days from the date that the application is determined to be or deemed complete unless the applicant agrees to extend the 120 calendar day time line pursuant to subsection 9 or unless State law provides otherwise. [ORD 4282; January 2004]
- 910. The 120 calendar day time line specified in Section 50.25.8 may be extended at the written request of the applicant. The total of all extensions may not to exceed 240 calendar days from the date the application was deemed complete. [ORD 4282; January 2004]
- 1011. The applicant may amend the application up to and including fourteen (14) calendar days after the application has been deemed complete. Amendments to an application submitted more than fourteen (14) calendar days after the application is deemed complete may be determined by the Director to be so substantial that the application should be treated as having been refiled. In such a case, the Director shall provide the applicant with the following options: provide the City with a waiver of the 120-day timeframe set forth in ORS 227.178 of a minimum of fourteen (14) calendar days from the date the amendment was submitted; treat the application as having been refiled as of the date the amendment was submitted; or, decide the application on the basis of the applicant's materials without the amendment.
- 1112 .Pursuant to Section 50.25.3, an application will not be complete until the required fee has been received by the City. For any application which has been on file with the City for more than 180 calendar days and the applicant has not paid the required fee, the application will be deemed withdrawn.

By current City procedure, staff inform an applicant of an application's completeness within approximately 20 days of submittal. In the event that an application is found to be lacking information, staff inform the applicant of what

information is missing and request a written response as to whether the applicant will submit the requested information. This requirement reflects the existing standard of ORS 227.178(2).

This proposed amendment clarifies that if an applicant chooses not to submit additional materials as specified in the City's completeness letter, the applicant will proceed at their own risk and that without a written agreement for an additional 30 days any new information submitted to the record will not be considered by staff

II. Facts and Findings

Section 40.85.15.1.C of the Development Code specifies that in order to approve a Text Amendment application, the decision-making authority shall make findings of fact, based on evidence provided by the applicant, that all of the criteria specified in Section 40.85.15.1.C.1-7 are satisfied. The following are the findings of fact for TA 2004-0009 (Completeness Process Amendment):

1. The proposal satisfies the threshold requirements for a Text Amendment application.

Section 40.85.15.1.A specifies that an application for a text amendment shall be required when there is proposed any change to the Development Code, excluding changes to the zoning map. TA 2004-0009 (Completeness Processing Amendment) proposes to amend Section 50.25. of the Beaverton Development Code currently effective through Ordinance 4332 (January 2005). Therefore, staff find that approval criterion one has been met.

2. All City application fees related to the application under consideration by the decision-making authority have been submitted.

Policy Number 470.001 of the City's Administrative Policies and Procedures manual states that fees for a City initiated application are not required where the application fee would be paid from the City's General Fund. The Development Services Division, which is a General Fund program, initiated the application. Therefore, the payment of an application fee is not required. Staff find that approval criterion two is not applicable.

3. The proposed text amendment is consistent with the provisions of the Metro Urban Growth Management Functional Plan.

Metro's Urban Growth Management Functional Plan is comprised of the following titles:

Title 1: Requirements for Housing and Employment Accommodations

Title 2: Regional Parking Policy

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Title 3: Water Quality and Flood Management Conservation
Title 4: Retail in Employment and Industrial Areas
Title 5: Neighbor Cities and Rural Reserves
Title 6: Regional Accessibility
Title 7: Affordable Housing
Title 8: Compliance Procedures and
Title 9: Performance Measures

TA 2004-0009 proposes to clarify procedures dealing with application completeness. The proposed amendments have no applicability to the Metro titles. Staff find that approval criterion three is not applicable.

4. The proposed text amendment is consistent with the City's Comprehensive Plan.

There are no specific Comprehensive Plan policies that address the proposed amendments to Section 50.25. (Application Completeness). The proposed text amendments will not change the intent of the existing Development Code regulations, such that goals and policies of the Comprehensive Plan will be impacted. The following policies are addressed generally:

Chapter 2 – Public Involvement Element

Staff suggests that Chapter 2 of the Comprehensive Plan (Public Involvement Element) is relevant to the proposed amendments. Although Chapter 2 of the Comprehensive Plan does not contain discrete policies to which the proposed amendments are applicable, staff suggests that the intent of Chapter 2 is met by the proposed text amendments, the required public noticing for the proposed amendments, and the requirement for a public hearing process before the Planning Commission as the initial decision-making authority followed by subsequent City Council consideration of the Planning Commission's recommendation. Staff find that the proposed text amendments are consistent with the provisions of the Beaverton Comprehensive Plan. Therefore, staff find that approval criterion four has been met.

5. The proposed text amendment is consistent with other provisions within the City's Development Code.

The proposed amendments do not create impacts or conflicts with other provisions within the Development Code. Staff find that proposed amendments are consistent with the other provisions of the Development Code. Staff find, therefore, approval criterion five has been met.

6. The proposed amendment is consistent with all applicable City ordinance requirements and regulations.

The current Development Code and Comprehensive Plan, are applicable to the proposed text amendment and are addressed in the findings of fact for approval criterion four and five. Staff did not identify any other applicable City ordinance requirements and regulations that would be affected by the proposed text amendments. Therefore, staff find that approval criterion six has been met.

7. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

Staff have determined that there are no other applications and documents related to the request that will require further City approval. Therefore, staff find that approval criterion seven has been met.

III. Conformance with Statewide Planning Goals

Because the proposal is for a text amendment to the Development Code, a demonstration of compliance with the Statewide Planning Goals is not required. ORS 197.225 requires that Statewide Planning Goals only be addressed for Comprehensive Plan Amendments. Nevertheless, the Statewide Planning Goals are useful to support the City's position on the proposed amendments. The proposed text amendment's conformance to relevant Statewide Planning Goals is briefly discussed below:

GOAL ONE - CITIZEN INVOLVEMENT

To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

The City is in compliance with this Statewide Planning Goal through the establishment of a Committee for Citizen Involvement (CCI). The City has gone even further by establishing Neighborhood Association Committees (NACs) for the purpose of providing widespread citizen involvement, and distribution of information. The proposed text amendments to the Development Code will not change the City of Beaverton's commitment to providing opportunity for citizen involvement, or place the City out of compliance with Statewide Planning Goal One.

GOAL TWO - LAND USE PLANNING

To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.

The City of Beaverton has adopted a Comprehensive Plan that includes text and maps (Ordinance 1800, and most recently amended by Ordinance 4187) along with implementation measures such as the Development Code (Ordinance 2050, effective through Ordinance No. 4332). These land use planning processes and policy framework form the basis for decisions and actions, such as the subject text amendment proposal. The proposed Development Code amendment has been processed in accordance with Section 40.85 (Text Amendment) and Section 50.50 (Type 4 Application) of the Development Code. Section 40.85 contains specific approval criteria for the decision-making authority to apply during its consideration of the text amendment application. Section 50.50 (Type 4 Application) specifies the minimum required public notice procedures to insure public input into the decision-making process. The City of Beaverton's Comprehensive Plan is consistent with Statewide Planning Goal 2.

IV. Conclusion and Staff Recommendation

Based on the facts and findings presented, staff conclude that the proposed amendment to the Development Code is consistent with all the text amendment approval criteria of Section 40.85.15.1.C.1-7. Therefore, staff recommend the Planning Commission **APPROVE** TA 2004-0009 (Completeness Processing Amendment) at the March 16, 2005 regular Commission hearing.